

ASSEMBLY BILL

No. 773

Introduced by Assembly Member Mullin

February 18, 2005

An act to amend Section 65589.5 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 773, as introduced, Mullin. Housing development: project: local agencies.

Under the Planning and Zoning Law, local agencies are required to make specified written findings based upon substantial evidence in the record before disapproving or conditionally approving a housing development project that renders it infeasible for the use of very low, low- or moderate-income households, including farmworker housing. This law requires that when a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the project's application is determined to be complete, a local agency may not propose to disapprove the project or conditionally approve it at a lower density unless the agency bases its decision on written findings supported by substantial evidence on the record that certain conditions exist.

This bill would make technical and conforming changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65589.5 of the Government Code is amended to read:

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, *as defined in paragraph (2) of subdivision*

(h), including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low- or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low- or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588 and that is in substantial compliance with this article, and the development project is not needed for the jurisdiction to meet its share of the regional housing need for very low, low-, or moderate-income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project is inconsistent with both the jurisdiction’s zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element in substantial compliance with this article. This subdivision cannot be utilized

1 to disapprove a housing development project—defined in
2 subdivision (a) if the development project is proposed on a site
3 that is identified for very low, low-, or moderate-income
4 households in the jurisdiction's housing element, and consistent
5 with the density specified in the housing element, even though it
6 is inconsistent with both the jurisdiction's zoning ordinance and
7 general plan land use designation.

8 (e) Nothing in this section shall be construed to relieve the
9 local agency from complying with the Congestion Management
10 Program required by Chapter 2.6 (commencing with Section
11 65088) of Division 1 of Title 7 or the California Coastal Act
12 (Division 20 (commencing with Section 30000) of the Public
13 Resources Code). Neither shall anything in this section be
14 construed to relieve the local agency from making one or more of
15 the findings required pursuant to Section 21081 of the Public
16 Resources Code or otherwise complying with the California
17 Environmental Quality Act (Division 13 (commencing with
18 Section 21000) of the Public Resources Code).

19 (f) Nothing in this section shall be construed to prohibit a local
20 agency from requiring the development project to comply with
21 objective, quantifiable, written development standards,
22 conditions, and policies appropriate to, and consistent with,
23 meeting the jurisdiction's share of the regional housing need
24 pursuant to Section 65584. However, the development standards,
25 conditions, and policies shall be applied to facilitate and
26 accommodate development at the density permitted on the site
27 and proposed by the development project. Nothing in this section
28 shall be construed to prohibit a local agency from imposing fees
29 and other exactions otherwise authorized by law that are essential
30 to provide necessary public services and facilities to the
31 development project.

32 (g) This section shall be applicable to charter cities because
33 the Legislature finds that the lack of housing is a critical
34 statewide problem.

35 (h) The following definitions apply for the purposes of this
36 section:

37 (1) "Feasible" means capable of being accomplished in a
38 successful manner within a reasonable period of time, taking into
39 account economic, environmental, social, and technological
40 factors.

(2) “Housing development project” means a use consisting of either of the following:

(A) Residential ~~units~~ use only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, “neighborhood commercial” means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) “Housing for very low, low-, or moderate-income households” means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) “Area median income” means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) “Neighborhood” means a planning area commonly identified as such in a community’s planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a

1 map prepared for planning purposes which lists the name and
2 boundaries of the neighborhood.

3 (6) “Disapprove the development project” includes any
4 instance in which a local agency does either of the following:

5 (A) Votes on a proposed housing development project
6 application and the application is disapproved.

7 (B) Fails to comply with the time periods specified in
8 subparagraph (B) of paragraph (1) of subdivision (a) of Section
9 65950. An extension of time pursuant to Article 5 (commencing
10 with Section 65950) shall be deemed to be an extension of time
11 pursuant to this paragraph.

12 (i) If any city, county, or city and county denies approval or
13 imposes restrictions, including design changes, a reduction of
14 allowable densities or the percentage of a lot that may be
15 occupied by a building or structure under the applicable planning
16 and zoning in force at the time the application is deemed
17 complete pursuant to Section 65943, that have a substantial
18 adverse effect on the viability or affordability of a housing
19 development for very low, low-, or moderate-income households,
20 and the denial of the development or the imposition of
21 restrictions on the development is the subject of a court action
22 which challenges the denial, then the burden of proof shall be on
23 the local legislative body to show that its decision is consistent
24 with the findings as described in subdivision (d) and that the
25 findings are supported by substantial evidence in the record.

26 (j) When a proposed housing development project complies
27 with applicable, objective general plan and zoning standards and
28 criteria, including design review standards, in effect at the time
29 that the housing development project’s application is determined
30 to be complete, but the local agency proposes to disapprove the
31 project or to approve it upon the condition that the project be
32 developed at a lower density, the local agency shall base its
33 decision regarding the proposed housing development project
34 upon written findings supported by substantial evidence on the
35 record that both of the following conditions exist:

36 (1) The housing development project would have a specific,
37 adverse impact upon the public health or safety unless the project
38 is disapproved or approved upon the condition that the project be
39 developed at a lower density. As used in this paragraph, a
40 “specific, adverse impact” means a significant, quantifiable,

1 direct, and unavoidable impact, based on objective, identified
2 written public health or safety standards, policies, or conditions
3 as they existed on the date the application was deemed complete.

4 (2) There is no feasible method to satisfactorily mitigate or
5 avoid the adverse impact identified pursuant to paragraph (1),
6 other than the disapproval of the housing development project or
7 the approval of the project upon the condition that it be
8 developed at a lower density.

9 (k) If in any action brought to enforce the provisions of this
10 section, a court finds that the local agency disapproved a project
11 or conditioned its approval in a manner rendering it infeasible for
12 the development of housing for very low, low-, or
13 moderate-income households, including farmworker housing,
14 without making the findings required by this section or without
15 making sufficient findings supported by substantial evidence, the
16 court shall issue an order or judgment compelling compliance
17 with this section within 60 days, including, but not limited to, an
18 order that the local agency take action on the development
19 project. The court shall retain jurisdiction to ensure that its order
20 or judgment is carried out and shall award reasonable attorney's
21 fees and costs of suit to the plaintiff or petitioner who proposed
22 the housing development, except under extraordinary
23 circumstances in which the court finds that awarding fees would
24 not further the purposes of this section. If the court determines
25 that its order or judgment has not been carried out within 60
26 days, the court may issue further orders as provided by law to
27 ensure that the purposes and policies of this section are fulfilled.

28 (l) In any action, the record of the proceedings before the local
29 agency shall be filed as expeditiously as possible and,
30 notwithstanding Section 1094.6 of the Code of Civil Procedure,
31 all or part of the record may be filed (1) by the petitioner with the
32 petition or petitioner's points and authorities, (2) by the
33 respondent with respondent's points and authorities, (3) after
34 payment of costs by the petitioner, or (4) as otherwise directed by
35 the court. If the expense of preparing the record has been borne
36 by the petitioner and the petitioner is the prevailing party, the
37 expense shall be taxable as costs.